

## **REMARKS/ARGUMENTS**

After the foregoing Amendment, claims 1-32 remain pending in the present application. Claims 1, 3, 9, 11, 20, 21, 26 and 27 have each been amended, as will be discussed below. No new matter was added. Withdrawal of all objections and rejections is respectfully requested for the reasons set forth below.

### **Amendments to the Specification**

By this Amendment, paragraphs [0030] and [0032] have been amended to correct obvious typographical errors. No new matter was added.

### **Objection to the Drawings**

In paragraph 1 of the Office Action mailed 25 August 2004, the drawings were objected to under 37 CFR 1.83(a) for three essentially separate reasons, as discussed below. Corrected drawing sheets in compliance with 37 CFR 1.121(d) were required in reply to the Office Action to avoid abandonment of the application. However, in view of certain amendments and Applicant's traverse of one basis for the drawing objection, concerning a feature for which illustration is not necessary as discussed below, Applicant believes that corrected drawing sheets are not required in this Response.

The drawings were first objected to for not showing the rear window extending "to . . . the window shoulder line", as recited in claims 1 and 32. Applicant traverses this objection in view of 35 U.S.C. 113, which states in pertinent part: "The applicant shall furnish a drawing *where necessary for the understanding of the subject matter to be patented.*" (Emphasis added) In this instance, Applicant asserts that it is not "necessary" to submit an additional drawing for the purpose of understanding this aspect of the present teachings, namely, that the rear window may extend to, but not necessarily beyond, the window shoulder line.

Specifically, a person skilled in the art will readily appreciate (after reading the specification in view of Figures 1-5) that the lower portion of the rear window (4) may be, as a representative and non-limiting example, replaced with an opaque portion. Naturally, no functional difference would result and it takes no particular skill to make such a change. However, in such a case, the "rear window" (4) itself need not extend below the window shoulder line (5), but may rather be formed so as to only extend to the shoulder line (5). Such a

window structure is clearly enabled by the written specification and drawings as filed. And of course, skilled persons will recognize that other modifications are possible without departing from the spirit of the present teachings.

A regulation can not be interpreted in a manner that is inconsistent with the authorizing statute. In this case, it is contended that no further drawings are “necessary” under Section 113, as this aspect of the present teachings can be easily understood based upon the present specification and drawings. Therefore, Rule 83(a) can not be interpreted to require a drawing in a situation when Section 113 does not require a drawing.

Second, the drawings also were objected to as not showing the features of a first end of each tensioning bow being pivotally coupled “directly . . . to the vehicle body,” and a second end of each tensioning bow portion being pivotally coupled “directly . . . to the rear window” in claim 1. Both instances of the phrase “directly or indirectly” have been deleted in claim 1 (as well as claim 21), which is believed to overcome this drawing objection. Naturally, this change is merely cosmetic and no substantive change to the scope of claims 1 or 21 is intended or warranted.

Third, the drawings were also objected to as not showing the roof being stored substantially below the window shoulder line when the roof is in the open position according to claim 11. The terms “substantially” and “completely” have been omitted from claim 11, which is again believed to overcome this drawing objection. Again, this change is merely cosmetic and no substantive change to the scope of claim 11 is intended or warranted.

In view of the above discussion and noted claim amendments, Applicant respectfully requests withdrawal of the objection to the drawings.

### **Claim Objections**

In paragraph 2 of the Office Action, claims 9-10 and 16-25 were objected to due to certain minor informalities. Specifically, claims 9, 16 and 20 were each objected to as it was thought that the recited ratio of “1:5” should be changed to “1:3”. The specification has been closely reviewed and it is noted that paragraph [0047] describes only one specific embodiment having a wall height ratio of 1:3. However, the first sentence of paragraph [0024] of the specification describes a more generalized embodiment of the present teachings having a “height ratio...within a range of between about 5:1 and 1:5”. In view of the support in the specification

provided by paragraph [0024], Applicant elects to maintain the scope of claims 9 and 16 as originally filed.

Claim 21 has been amended to insert --a-- at line 2, as was suggested.

Claim 24 was objected to as allegedly being an improper dependent claim. Applicant traverses this objection in view of MPEP 2173.05(f), which permits such dependent claims as long as no confusion results. In this case, it is believed that the structure of claim 24 is clear as written and no confusion is possible as to the scope of claim 24. It is further noted that the suggestion to re-write claim 24 as an independent claim would have no effect on the scope of claim 24, but would have the undesirable effect of unnecessarily lengthening the application. Therefore, in view of the conciseness provided by claim 24 and the lack of any confusion as to the scope of claim 24, it is respectfully believed that this objection should be withdrawn.

In view of the above, Applicant respectfully requests withdrawal of the objections to claims 9-10 and 16-25.

#### **Claim Rejections - 35 USC § 112**

In paragraph 4, claims 3-20, 22-25 and 27-32 were rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as their invention.

Specifically, claims 3 and 27 were each rejected as lacking clarity concerning the lower portion of the rear window being disposed within a space defined between the tensioning bow portions. In the present amendment, claims 3 and 27 were each amended to indicate that this condition exists when the roof is in the “roof closed position”. Support for this amendment is provided by the first sentence of paragraph [0034], which defines the roof closed position as the position shown in Figures 1-3 and defines the roof open position as the position shown in Figures 5. Further, the last sentence of paragraph [0035] provides a description concerning the roof, as shown in Figure 1 (i.e., the roof closed position), and indicates that “at least a portion of the lower edge 17 of the rear window 4 optionally may be disposed within the gap or space” between the tensioning bow portions 16a. In order to be consistent with the lexicon defined by the first sentence of paragraph [0034], claim 3 states in pertinent part: “wherein a lower portion of the rear window extends within the space defined between the tensioning bow portions when

the roof is disposed in the roof closed position.” (Emphasis added) Claim 27 has been amended in a similar manner.

Claim 11 was rejected as lacking clarity with respect to the term “substantially completely”. As was noted above, these words have been omitted to overcome the above-noted drawing objection, although no substantive change in claim scope results from this omission.

Claim 22 was rejected as being inconsistent with Figure 3. Applicant traverses, because claim 22 states “a space between the tensioning bow portions is defined proximal to a lower, rear edge of the foldable roof.” As shown in Figure 3, the tensioning bow portions have an upward curvature when Figure 3 is viewed from left to right. If this upward curvature is extended to the corresponding upward curvature of the not shown second tensioning bow, a space can be defined in this plane, which would not be horizontal in the embodiment shown in Figure 3, but rather would be upwardly sloped. When viewed in this context, the lower edge 17 of the rear window 4 clearly extends within such space and no amendments of claim 22 are believed to be necessary as a result.

In view of the above, claims 3-20, 22-25 and 27-32 are each definite, such that Applicant respectfully requests withdrawal of the rejection of these claims under 35 USC § 112, second paragraph.

### **Allowable Subject Matter**

Applicant graciously acknowledges the allowance of claims 1, 2 and 26 as stated in paragraph 5 of the Office Action.

In paragraph 6, claims 3-20, 22-25 and 27-32 were indicated as being allowable if rewritten or amended to overcome the rejections under 35 USC § 112, second paragraph, and claim 21 was indicated to be allowable if rewritten or amended to overcome the objection noted in paragraph 2 of the Office Action. In view of the above amendments and discussion, Applicant believes that all objections and rejections have been overcome, such that claims 3-25 and 27-32 should now all be allowable.

## Conclusion

As it is believed that the present amendments and remarks overcome the objections and rejections made in the outstanding Office Action, it is respectfully submitted that all claims pending in the present Application are in condition for allowance. Therefore, an early Notice of Allowance is respectfully solicited.

If the Examiner believes an interview, either telephonic or in person, will advance the prosecution of this matter, it is respectfully requested that the Examiner contact the undersigned at the Examiner's convenience.

Respectfully submitted,

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